

NATIONAL MARINE FISHERIES SERVICE, ALASKA REGION  
OFFICE OF ADMINISTRATIVE APPEALS

In re Application of	)	Appeal No. 03-0017
	)	
MORGAN DOUBLEDAY,	)	DECISION
Appellant.	)	
	)	February 15, 2007
_____	)	

STATEMENT OF THE CASE

Morgan Doubleday filed a timely appeal of an Initial Administrative Determination (IAD), which the Restricted Access Management Program (RAM) issued under the North Pacific Groundfish and Crab License Limitation Program (LLP).<sup>1</sup> Mr. Doubleday may appeal the IAD because it directly and adversely affects his interests, as required by 50 C.F.R. § 679.43(b).

The IAD denied Mr. Doubleday’s application for an LLP groundfish and an LLP crab license based on the fishing history of the F/V EASTERN (ADFG No. 30810, USCG No. 228795). The F/V EASTERN sank on January 2, 1995, but before it sank, according to the official LLP record, the vessel made the harvests necessary for an LLP groundfish license with endorsements for the Bering Sea, the Central Gulf and Southeast Outside, as set forth in 50 C.F.R. § 679.4(k)(4)(ii)(B), (K) and (O).<sup>2</sup>

The IAD denied Mr. Doubleday’s application because RAM concluded that Mr. Doubleday was not an eligible applicant for an LLP license, as “eligible applicant” is defined in 50 C.F.R. § 679.2. The IAD concluded that Mr. Doubleday did not own the F/V EASTERN on June 17, 1995, and did not own the LLP-qualifying fishing history of the F/V EASTERN according to the express terms of a written contract that clearly and unambiguously transferred or retained to him that fishing history.

Mr. Doubleday claims that he owns the LLP-qualifying fishing history of the F/V EASTERN according to the express terms of a written contract. The record provides sufficient information to decide Mr. Doubleday’s appeal, as required by 50 C.F.R. 679.43(g)(2). I therefore close the

---

<sup>1</sup> IAD (May 8, 2003). Mr. Doubleday filed a Petition for Reconsideration of the IAD on June 11, 2003, which RAM, and this Office, treated as a timely appeal of the IAD. The LLP is located in 50 C.F.R. § 679, primarily 50 C.F.R. § 679.2 (definitions); 50 C.F.R. § 679.4(k)(license requirements); 50 C.F.R. § 679. 7 (prohibitions); and 50 C.F.R. § 679.43 (appeals). The LLP regulations are on the NMFS Alaska Region website: <http://www.fakr.noaa.gov/regs/summary.htm>

<sup>2</sup> Qualification Summary (Sept. 9, 1999) [Exhibit 26]. The F/V EASTERN was 58 feet length overall. It is in Category “C,” which are vessels less than 60 feet length overall. 50 C.F.R. § 679.4(k)(3)(iii)(C). The official LLP record did not show that the F/V EASTERN made the harvests necessary for an LLP crab license.

record and decide Mr. Doubleday's appeal.

## SUMMARY

The IAD is affirmed. Mr. Doubleday is not an eligible applicant for an LLP license as eligible applicant is defined in 50 C.F.R. § 679.2. First, Mr. Doubleday did not own the F/V EASTERN on June 17, 1995. He does not claim that he did.

Second, Mr. Doubleday does not own the LLP-qualifying fishing history of the F/V EASTERN according to the terms of a written contract, or court order, that clearly and unambiguously transfers or retains to him the LLP-qualifying fishing history of the F/V EASTERN. Mr. Doubleday's agreement with Daryl Knutsen and Don Knutsen, dated December 16, 1989, that F/V EASTERN, Inc., could use Mr. Doubleday's fishing licenses for three years, did not clearly and unambiguously transfer or retain to Mr. Doubleday any fishing history of the F/V EASTERN. The Bill of Sale, dated January 3, 1990, which transferred 100% of Mr. Doubleday's interest in the F/V EASTERN to Daryl Knutsen, did not transfer or retain to Mr. Doubleday any interest in the fishing history of the F/V EASTERN. The Stock Redemption Agreement, dated February 5, 1992, by which Mr. Doubleday sold his stock in F/V EASTERN, Inc., back to the corporation, did not transfer or retain to Mr. Doubleday any interest in the fishing history of the F/V EASTERN. The statement from Don Knutsen, which Mr. Doubleday submitted to NMFS in April 1996 to support Mr. Doubleday's application for a moratorium permit, does not constitute a written contract that clearly and unambiguously transferred or retained to Mr. Doubleday the LLP-qualifying fishing history of the F/V EASTERN. Mr. Doubleday has not shown cause to leave the record open for submission of other documents.

## ISSUES

1. Did Morgan Doubleday own the F/V EASTERN on June 17, 1995?
2. Does Mr. Doubleday own the LLP-qualifying fishing history of the F/V EASTERN according to a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred to Mr. Doubleday or retained by Mr. Doubleday?

## ANALYSIS

To receive an LLP license, an applicant must prove that the applicant is an eligible applicant. The term "eligible applicant" is defined in federal regulation 50 C.F.R. § 679.2:

Eligible applicant means a qualified person who submitted an application during the application period announced by NMFS and:

(1) **Who owned a vessel on June 17, 1995**, from which the minimum number of harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5), unless the fishing history of that vessel was transferred in conformance

with the provisions in paragraph (2) of this definition; or

**(2) To whom the fishing history of a vessel from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5) has been transferred or retained by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained; . . . [emphasis added]**<sup>3</sup>

Mr. Doubleday applied for an LLP license based on the fishing history of the F/V EASTERN during the application period announced by NMFS.<sup>4</sup> The F/V EASTERN had an LLP-qualifying fishing history. The vessel made “the minimum number of harvests . . . in the relevant areas during the qualifying periods specified in § 679.4(k)(4)” that are required for an LLP groundfish license with three endorsements: Bering Sea, Central Gulf and Southeast Outside.

But, to be eligible, Mr. Doubleday must show he has a particular connection with the F/V EASTERN. He must either have owned it on June 17, 1995, or he must own the LLP-qualifying fishing history of the F/V EASTERN according to “the express terms of a written contract that clearly and unambiguously provides that the qualifications for license under the LLP have been transferred [to him] or retained [by him].” I examine whether Mr. Doubleday meets either requirement.

### **1. Did Mr. Doubleday own the F/V EASTERN on June 17, 1995? No.**

Mr. Doubleday bought the F/V EASTERN from Edward Nerlin on February 8, 1980.<sup>5</sup> Mr. Doubleday sold 100% of his interest in the F/V EASTERN to Daryl Knutsen on January 3, 1990.<sup>6</sup> On that same day, Daryl Knutsen sold 100% of his interest in the F/V EASTERN to F/V EASTERN, Inc.<sup>7</sup> The Abstract of Title for this vessel therefore shows that F/V EASTERN, Inc., owned 100% of the F/V EASTERN on January 3, 1990.

---

<sup>3</sup> Federal regulation 50 C.F.R. § 679.2 contains two additional ways a person can be an eligible applicant. One applies to the Norton Sound king crab summery fishery, the other to individuals who can demonstrate eligibility pursuant to the Rehabilitation Act of 1973. Mr. Doubleday claims neither.

<sup>4</sup> Notification of application period, 64 Fed. Reg. 49,104 (Sept. 10, 1999). The application period was September 13, 1999 to December 17, 1999. Mr. Doubleday applied on November 15, 1999. No one else applied for an LLP license based on the fishing history of the F/V EASTERN.

<sup>5</sup> Abstract of Title for F/V EASTERN (May 24, 2006) [Exhibit 27].

<sup>6</sup> That was the date of the Bill of Sale from Morgan Doubleday to Daryl Knutsen. Bill of Sale (Jan. 3, 1990) [Exhibit 10]. This transaction and this document weres recorded in the Abstract of Title for the vessel. [Exhibit 27]

<sup>7</sup> Bill of Sale (Jan. 3, 1990) [Exhibit 11]; Abstract of Title (May 24, 2006) [Exhibit 27].

The Abstract of Title shows no changes in ownership of the vessel after January 3, 1990: no changes before the vessel sank on January 2, 1995,<sup>8</sup> and no changes after the vessel sank.<sup>9</sup> The Abstract of Title therefore shows that F/V EASTERN, Inc., owned this vessel on June 17, 1995. The official LLP record also shows that F/V EASTERN, Inc., owned this vessel on June 17, 1995.<sup>10</sup> Mr. Doubleday has not claimed that he owned the F/V EASTERN on June 17, 1995, or any time after he sold the vessel to Daryl Knutsen on January 3, 1990. Mr. Doubleday claims that he owns the fishing history of the F/V EASTERN, apart from the vessel, an issue I examine in the next section. But here I conclude that Mr. Doubleday did not own the F/V EASTERN on June 17, 1995.

A word about F/V EASTERN, Inc., is in order. F/V EASTERN, Inc., was formed in December 1989, when Morgan Doubleday sold the F/V EASTERN to Daryl Knutsen and Daryl Knutsen sold the F/V EASTERN to F/V EASTERN, Inc. The corporation had three shareholders, three officers and three directors: Morgan Doubleday, Daryl Knutsen and Donald Knutsen.<sup>11</sup> Each had 1000 shares of stock.

In February 1992, Morgan Doubleday sold his 1000 shares of stock back to the corporation for \$44,000: a down payment of \$22,000 and the balance of \$22,000 due by January 1, 1993.<sup>12</sup> The Stock Redemption Agreement provided: “Seller [Morgan Doubleday] has no further relationship with the Corporation except as a creditor.”<sup>13</sup> With the sale of his stock, Mr. Doubleday resigned from any position as a director, officer or employee of the F/V EASTERN, Inc.<sup>14</sup> Therefore, I also conclude that Mr. Doubleday had no ownership interest in the corporation on June 17, 1995.

**2. Does Mr. Doubleday own the LLP-qualifying fishing history of the F/V EASTERN according to a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred to Mr. Doubleday or retained by Mr. Doubleday? No.**

---

<sup>8</sup> Trial Memorandum of Mary Knutsen, *Knutsen v. Knutsen*, Superior Court for the State of Washington for Snohomish County, Cause No. 94-3-02606 - 4 (July 5, 1995) [Exhibit 24 at 3]. These were the divorce proceedings between Donald Knutsen and Mary Knutsen.

<sup>9</sup> Abstract of Title (May 24, 20206) [Exhibit 27].

<sup>10</sup> Qualification Summary (Sept. 9, 1999) [Exhibit 26].

<sup>11</sup> Minutes of Organizational Meeting of Board of Directors of F/V EASTERN, Inc., (Dec. 14, 1989) [Exhibit 4 at 3 - 10]; Minutes of First Meeting of Shareholders (Dec. 26, 1989) [Exhibit 4 at 2]. Donald Knutsen and Daryl Knutsen were father and son. .

<sup>12</sup> Stock Redemption Agreement (Feb. 5, 1992) [Exhibit 4 at 17 - 22].

<sup>13</sup> Stock Redemption Agreement (Feb. 5, 1992) [Exhibit 4 at 18].

<sup>14</sup> Stock Redemption Agreement (Feb. 5, 1992) [Exhibit 4 at 17 - 22].

The second definition of eligible applicant in federal regulation 50 C.F.R. § 679.2 is a person

(2) To whom the fishing history of a vessel from which the minimum number of documented harvests of license limitation groundfish or crab species were made in the relevant areas during the qualifying periods specified in § 679.4(k)(4) and (k)(5) has been transferred or retained by the express terms of a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained.

The term “qualifications for a license under the LLP” means the LLP-qualifying fishing history of a vessel. Thus, the contract must clearly and unambiguously transfer or retain the fishing history of a vessel that enables NMFS to issue the applicant an LLP license.

A court order can constitute a “written contract” that establishes a person as an eligible applicant for an LLP license, as long as the court order has the same specificity required in 50 C.F.R. § 679.2 of the written contract, namely that the court order “clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained.” I examine whether Mr. Doubleday meets that standard and has shown that he owns, by the express terms of a written contract or court order, the LLP-qualifying fishing history of the F/V EASTERN.

**A. Mr. Doubleday’s agreement with Daryl Knutsen and Don Knutsen, dated December 16, 1989.**

Mr. Doubleday argues that, when he sold the F/V EASTERN to Daryl Knutsen in January 1990, he had retained the rights to the fishing history of the vessel. He argues he did this by a document, signed December 16, 1989, that states in its entirety:

Document of Intent [<sup>15</sup>]

Purpose of Proposal is to keep the F/V EASTERN fishing under any and all circumstances.\* \*\* At such time that licenses become necessary to keep F/V Eastern fishing:

- 1) Morgan Doubleday will allow the use of his licenses for three years, from time of Announcement (for F/V EASTERN purposes) so that financing can be obtained for Eastern Inc, licenses,
- 2) The intent of this contract is to keep F/V Eastern Inc. in operation during this interim period. A charge for the use of Morgan Doubleday’s license will be 10% of Gross.

---

<sup>15</sup> This document is Exhibit 5. Mr. Doubleday submitted a xerox copy of it. It is not clear whether “Document of Intent” was in the original document.

Daryl Knutsen s/s/ 12/16/89  
Morgan Doubleday s/s/ 12/16/89

Don Knutsen s/s/

\* Specifically N. Pacific and Bering Sea longlining, Bk. Cod, Halibut, Gray Cod, And Misc. Finfish.

\*\* Does not include Chatham and Clarence Strait pers [unclear] [Exhibit 5]

This contract does not meet the “written contract” definition of eligible applicant for at least two reasons. First, it does not refer to the fishing history of the F/V EASTERN *at all*, much less “clearly and unambiguously” provide that Mr. Doubleday retained the fishing history of the vessel. The contract states that “[a]t such time that licenses become necessary to keep F/V Eastern fishing,” Morgan Doubleday “will allow the use of his licenses for three years, from time of Announcement (for F/V EASTERN purposes) so that financing can be obtained for Eastern Inc, licenses.”

The three years after the Agreement were 1990, 1991 and 1992. It did not become necessary to have a limited access license to keep the F/V EASTERN fishing in the North Pacific groundfish or crab fisheries in 1990, 1991 and 1992. That did not become necessary until 1996, when vessel owners had to obtain moratorium permits under the Vessel Moratorium Program.<sup>16</sup> Before 1996, these were open access fisheries. All a vessel owner needed to fish in federal waters was a Federal Fisheries Permit.<sup>17</sup> Therefore, it is highly unlikely that the Agreement took effect at all.

Second, even if the Agreement did take effect, and Mr. Doubleday had to allow F/V EASTERN, Inc., to use his licenses, the Agreement states that he would be compensated by 10% of the gross, presumably 10% of the vessel’s gross earnings that were made possible by the use of Mr. Doubleday’s licenses. The Agreement does not retain to Mr. Doubleday any of the fishing history of the F/V EASTERN resulting from fishing done from the F/V EASTERN *before* Mr. Doubleday sold the vessel to Daryl Knutsen. The Agreement does not retain to Mr. Doubleday any of the fishing history of the F/V EASTERN resulting from fishing done *after* Mr. Doubleday sold the vessel to Daryl Knutsen.

**B. Bill of Sale of F/V EASTERN from Morgan Doubleday to Daryl Knutsen, dated January 3, 1990.**

The Bill of Sale transfers 100% of the vessel to Daryl Knutsen, “together with all components,

---

<sup>16</sup> Final Rule, 60 Fed. Reg. 40,763 (1995). Moratorium permits were required from 1996 to 1999. On January 1, 2000, LLP licenses replaced moratorium permits. Final LLP Rule, 63 Fed. Reg. 52,642, 52,642 (1998); Final Rule, 64 Fed. Reg. 3651 (1999).

<sup>17</sup> 50 C.F.R. § 679.4(b) (current version of Federal Fisheries Permit requirement).

accessories, tackle and gear with which the vessel is currently outfitted. The vessel is sold where is, as is with all faults and the terms and conditions of this bill of sale replace and supersede any and all prior express or implied warranties.”<sup>18</sup> This document did not reserve to Mr. Doubleday any interest in the fishing history of the F/V EASTERN.

### **C. Stock Redemption Agreement, February 9, 1992.**

By this agreement, Mr. Doubleday sold his stock back to the corporation in return for \$22,000 immediately and \$22,000 by January 1, 1993. Mr. Doubleday did not retain any interest in the F/V EASTERN or F/V EASTERN, Inc. He resigned as an officer and a director and, in the words of the Stock Redemption Agreement, had “no further relationship with the Corporation except as a creditor.”<sup>19</sup> Mr. Doubleday received money, and money only, for his stock in F/V EASTERN, Inc. This contract did not transfer or retain to Mr. Doubleday any interest in the fishing history of the F/V EASTERN.

### **D. Don Knutsen’s statement submitted to NMFS on April 29, 1996.**

Mr. Doubleday submitted a xerox copy of a statement by Don Knutsen with Mr. Doubleday’s application for a moratorium permit on April 29, 1996.<sup>20</sup> It states:

To whom it may concern:

When we bought the fishing vessel “Eastern” from Morgan Doubleday he made it clear that no permits or moratorium rights would go with the sale. I do not own the Eastern at this time or connected with it at this time.”

s/s Don Knutsen [Exhibit 1]

I note the statement is signed by Don Knutsen, not Daryl Knutsen. I do not consider that a problem because, in divorce proceedings between Don Knutsen and Mary Knutsen in 1995, the court concluded that Daryl Knutsen had no interest in the F/V EASTERN or F/V EASTERN, Inc.<sup>21</sup> With Morgan Doubleday having sold his shares in February 1992, Don Knutsen was the

---

<sup>18</sup> Exhibit 10.

<sup>19</sup> Stock Redemption Agreement (Feb. 5, 1992) [Exhibit 4 at 18].

<sup>20</sup> RAM denied Mr. Doubleday’s application for a moratorium permit. I dismissed that appeal, without deciding the merits, because the Moratorium Program expired on December 31, 1999. *Morgan Doubleday*, Appeal No. 96-0022 (Jan. 3, 2000) [Exhibit 8].

<sup>21</sup> The court ruled: “While the Petitioner’s son, Daryl, originally had an interest in the Eastern, he released any and all interest in that vessel or corporation when he became financially indebted and, as a result, Petitioner’s son has no interest in the corporation or vessel.” Decree of Dissolution (Aug. 8, 1995), *Knutsen v. Knutsen*. [Exhibit 15 at 4]. The court awarded the F/V EASTERN, F/V EASTERN, Inc., and the IFQ permits resulting from the fishing history of the F/V EASTERN to Mary Knutsen. *Id.* [Exhibit 15 at 6]. For further discussion of this decree, see page 9 *infra*.

sole shareholder of F/V EASTERN, Inc., as of June 17, 1995. I note that F/V EASTERN, Inc., no longer exists. It was dissolved by the Washington Secretary of State on March 25, 1996.<sup>22</sup> But, for other reasons, I find that Mr. Knutsen's statement does not clearly and unambiguously transfer or retain to Mr. Doubleday the LLP qualifying fishing history of the F/V EASTERN.

Mr. Knutsen's statement says that Mr. Doubleday made clear no permits or moratorium rights would go with "the sale." It is not clear what "the sale" refers to. It is either when Mr. Doubleday executed the Bill of Sale in January 1990 or when Mr. Doubleday sold his stock in F/V EASTERN, Inc., in February 1992.

If "the sale" refers to Mr. Doubleday's bill of sale to Daryl Knutsen, that event occurred in January 1990. At best, this would mean that Mr. Doubleday reserved the permits based on fishing the vessel had done by the date of sale: January 3, 1990. But, as of January 1990, the F/V EASTERN had not made – and could not possibly have made – the harvests necessary for an LLP groundfish license. To receive an LLP groundfish license, a vessel must have made harvests in an endorsement qualification period, which was January 1, 1992 to June 17, 1995.<sup>23</sup>

As for Mr. Doubleday retaining the right to licenses based on fishing done *after* the sale, it would be highly unusual for a seller to reserve the right to fishing history created after the seller no longer owned the vessel. And I have concluded that Mr. Doubleday did not receive any interest in the fishing history of the F/V EASTERN through the only documents contemporaneous with the January 1990 sale: the Agreement, dated December 16, 1989, and the Bill of Sale itself. In fact, the December 1989 agreement shows what Mr. Doubleday did receive: a percentage of the vessel's gross earnings if the corporation had to use his licenses. I conclude that Mr. Knutsen's statement, written six years after the event, is not sufficient to show that Mr. Doubleday retained any interest in the fishing history of the F/V EASTERN when Mr. Doubleday sold the vessel in January 1990.

It is possible that "the sale" refers to the sale by Mr. Doubleday of his shares of stock in F/V EASTERN, Inc., back to the corporation in February 1992, because that is when money changed hands. But the Stock Redemption Agreement unequivocally states that the only consideration Mr. Doubleday received for selling his stock was \$44,000.<sup>24</sup> Don Knutsen's April 1996 is insufficient to show that, in addition, Mr. Doubleday received an interest in the fishing history of the F/V EASTERN.<sup>25</sup>

---

<sup>22</sup> Memorandum to File from Sandra Goveia, OAA Legal Intern (July 5, 2006) [Exhibit 12].

<sup>23</sup> 50 C.F.R. § 679.4(k)(4)(ii).

<sup>24</sup> Exhibit 4 at 17 - 22.

<sup>25</sup> When contacted by this Office, Mr. Knutsen stated that, when he and his son Daryl Knutsen bought the vessel from Mr. Doubleday, nothing was said about fishing history, IFQ, licenses or rights. Memorandum to File from Sandra Goveia (Aug. 19, 2006).



Thus, the documents currently in the record, singly or together, do not show that Mr. Doubleday owns the LLP-qualifying fishing history of the F/V EASTERN according to a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred to Mr. Doubleday or retained by Mr. Doubleday.

**D. Other documents that Mr. Doubleday wishes to submit in the future.**

Mr. Doubleday states that, although he has not submitted a written contract or court order that shows he owns the fishing history of the F/V EASTERN, he would like the opportunity to submit documents not yet in existence which would do that, namely [1] an agreement with Don Knutsen transferring to Mr. Doubleday his, Mr. Knutsen's, interest in the LLP fishing history of the F/V EASTERN and [2] a court order from a state court extinguishing Mary Knutsen's interest in the LLP fishing history of the F/V EASTERN.<sup>26</sup> I conclude that Mr. Knutsen has not shown cause to leave the record open so he would attempt to submit those documents.

The second definition of eligible applicant in 50 C.F.R. § 679.2 does not specify a date by which the applicant must have executed a contract transferring or retaining the LLP-qualifying fishing history. This contrasts with the first definition of eligible applicant, which clearly specifies a date – June 17, 1995 – on which an applicant must have owned the vessel which created the LLP-qualifying fishing history. In light of this, I gave Mr. Doubleday the opportunity to submit additional documents to prove that he owns the fishing history of the F/V EASTERN, before the agency took final action on his appeal.<sup>27</sup>

Mr. Doubleday, through counsel, submitted documents from *Knutsen v. Knutsen*, the divorce action in Washington State between Don Knutsen and Mary Knutsen in 1995.<sup>28</sup> The court in *Knutsen v. Knutsen* awarded all right, title and interest in the F/V EASTERN and the F/V EASTERN, Inc., to Mary Knutsen.<sup>29</sup> But, since the court was unaware that the F/V EASTERN had an LLP fishing history that had value – in *addition* to the IFQ fishing history which the court knew about and awarded to Mary Knutsen – I did not interpret the court's decree as clearly and unambiguously transferring to Mary Knutsen all of Don Knutsen's interest in the LLP fishing history of the F/V EASTERN.<sup>30</sup>

I ruled on November 27, 2006, that, for Mr. Doubleday to prove he owned the fishing history of

---

<sup>26</sup> Letter (e-mail) from Michael Hough to Mary Alice McKeen (Jan. 26, 2007).

<sup>27</sup> *Order* (June 29, 2005).

<sup>28</sup> Exhibits 13 to 24.

<sup>29</sup> Decree of Dissolution (Aug. 8, 1995) [Exhibit 15 at 6]; Findings of Fact and Conclusions of Law (Aug. 8, 1995) [Exhibit 14 at 7].

<sup>30</sup> *Order Providing Appellant with Deadline to Submit Written Contract* (Nov. 27, 2006).

the F/V EASTERN, he had to submit a written contract with Mary Knutsen and a written contract with Don Knutsen clearly and unambiguously transferring to Mr. Doubleday each of their interests in the LLP fishing history of the F/V EASTERN.<sup>31</sup> I gave Mr. Doubleday thirty days to submit these contracts. Mr. Doubleday did not submit a contract with either Don Knutsen or Mary Knutsen; instead, on the thirtieth day of the period, Mr. Doubleday, through counsel, requested a thirty-day extension to submit the contracts.<sup>32</sup> I granted a thirty-day extension on December 28, 2006.<sup>33</sup>

Mr. Doubleday did not submit a contract with Don Knutsen or Mary Knutsen within the thirty days. On the thirtieth day, Mr. Doubleday, through counsel, instead submitted an e-mail, which stated that Mr. Doubleday's counsel believed that Mr. Doubleday could submit a contract with Don Knutsen, but that Mr. Knutsen first wanted some information from Mr. Doubleday.<sup>34</sup> I note that Mr. Doubleday had stated on July 19, 2006, his intention "to get a new, more precise contract regarding the LLP rights from Don Knutsen."<sup>35</sup> And a contract with Don Knutsen alone would not show that Mr. Doubleday owns the LLP fishing history of the F/V EASTERN because it would not transfer Mary Knutsen's interest to Mr. Doubleday.

As for Ms. Knutsen's interest, Mr. Doubleday, through counsel, stated that it was his intention that Mr. Doubleday would file an action in State court to attempt to extinguish Mary Knutsen's interest in the LLP fishing history of the F/V EASTERN.<sup>36</sup> I declined to keep the record open, and delay a decision on this appeal, to allow Mr. Doubleday to file such an action.<sup>37</sup> I reaffirm the conclusion that Mr. Doubleday has not shown cause to leave the record open, based on the reasons in the Order:

In conclusion, I will not use the ambiguity in the definition of eligible applicant in 50 C.F.R. § 679.2 – that it does not state a date by which an LLP applicant must have owned an LLP-qualifying fishing history – as a mechanism to delay deciding this appeal for the length of time necessary for Mr. Doubleday to pursue *Mr. Knutsen's claim* in a Washington court on a theory that would succeed only if a Washington court eliminated Mary Knutsen's interest in the LLP fishing history

---

<sup>31</sup> *Order Providing Appellant with Deadline to Submit Written Contract* (Nov. 27, 2006).

<sup>32</sup> Letter (e-mail) from Michael Hough to Mary Alice McKeen (Dec. 27, 2006).

<sup>33</sup> Letter (e-mail) from Mary Alice McKeen to Michael Hough (Dec. 28, 2006), followed by an Order. *Order Granting Extension to Submit Written Contracts* (Jan. 3, 2007).

<sup>34</sup> Letter (e-mail) from Michael Hough to Mary Alice McKeen (Jan. 26, 2007).

<sup>35</sup> Letter (e-mail) from Michael Hough to Mary Alice McKeen (July 19, 2006).

<sup>36</sup> Letter (e-mail) from Michael Hough to Mary Alice McKeen (Jan. 26, 2007).

<sup>37</sup> *Order Denying Extension to File Action in State Court* (Jan. 31, 2007).

of the F/V EASTERN, when a Washington court has already ruled that the F/V EASTERN is a marital asset. The request for an extension to file such an action is DENIED.<sup>38</sup>

The appeal regulation gives me the discretion to [1] deny an appeal outright, [2] issue a decision on the merits of the appeal, if the record contains sufficient information on which to reach final judgment, or [3] hold a hearing to resolve a factual dispute.<sup>39</sup> I did not deny the appeal outright. There is no factual dispute to resolve through a hearing. The issue on appeal is whether Mr. Doubleday owns the fishing history of the F/V EASTERN according to “the express terms of a written contract that clearly and unambiguously provides that the qualifications for license under the LLP have been transferred [to him] or retained [by him].”<sup>40</sup> The record contains sufficient information for me to reach a final decision on that question.

I therefore close the record and conclude that Mr. Doubleday does not own the LLP-qualifying fishing history of the F/V EASTERN by a written contract that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred to him or retained to him. I conclude that Mr. Doubleday is therefore not an eligible applicant for the LLP license based on the fishing history of the F/V EASTERN.

#### FINDINGS OF FACT

1. Morgan Doubleday did not own the F/V EASTERN on June 17, 1995.
2. Morgan Doubleday did not own any interest in F/V EASTERN, Inc., on June 17, 1995.
3. The written agreement between Daryl Knutsen, Don Knutsen and Morgan Doubleday, dated December 16, 1989, did not transfer or retain to Morgan Doubleday any interest in the fishing history of the F/V EASTERN.
4. The Bill of Sale for the F/V EASTERN, dated January 3, 1990, from Morgan Doubleday to Daryl Knutsen did not transfer or retain to Morgan Doubleday any interest in the fishing history of the F/V EASTERN.
5. The Stock Redemption Agreement between Morgan Doubleday and F/V EASTERN, Inc., dated February 9, 1992, did not transfer or retain to Morgan Doubleday any interest in the fishing history of the F/V EASTERN.
6. Donald Knutsen’s statement, submitted to NMFS in April 1996, did not clearly and

---

<sup>38</sup> *Order Denying Extension to File Action in State Court* (Jan. 31, 2007) at 4 (emphasis added).

<sup>39</sup> 50 C.F.R. § 679.43 (g)(1), (2), (3).

<sup>40</sup> 50 C.F.R. § 679.2.

unambiguously transfer or retain to Morgan Doubleday any interest in the fishing history of the F/V EASTERN created before or after Mr. Doubleday's sale of the vessel in January 1990.

7. Donald Knutsen's statement, submitted to NMFS in April 1996, did not clearly and unambiguously transfer or retain to Morgan Doubleday any interest in the fishing history of the F/V Eastern created before or after Mr. Doubleday's sale of his stock in F/V EASTERN, Inc., in February 1992.

8. Morgan Doubleday has not submitted any written contract or court order that transfers to him Don Knutsen's interest in the LLP-qualifying fishing history of the F/V EASTERN.

9. Morgan Doubleday has not submitted any written contract or court order that transfers to him Mary Knutsen's interest in the LLP-qualifying fishing history of the F/V EASTERN.

#### CONCLUSIONS OF LAW

1. Morgan Doubleday did not own the F/V EASTERN on June 17, 1995.

2. Morgan Doubleday did not own any interest in F/V EASTERN, Inc., on June 17, 1995.

3. Morgan Doubleday does not own the LLP-qualifying fishing history of the F/V EASTERN according to a written contract or court order that clearly and unambiguously provides that the qualifications for a license under the LLP have been transferred or retained to Mr. Doubleday.

4. Morgan Doubleday has not shown cause to leave the record open.

5. Morgan Doubleday is not the eligible applicant for the LLP groundfish license based on the fishing history of the F/V EASTERN.

#### DISPOSITION

The IAD that is the subject of this appeal is **AFFIRMED**. This Decision takes effect March 12, 2007, unless by that date the Regional Administrator orders review of the Decision.

Any party or RAM may submit a Motion for Reconsideration, but it must be received by this Office not later than 4:30 p.m., Alaska time, on the tenth day after this Decision, February 19, 2007. A motion for reconsideration must be in writing, must specify one or more material matters of fact or law that I have overlooked or misunderstood, and must be supported by a written statement in support of the motion.

---

Mary Alice McKeen  
Administrative Judge